IMPLEMENTING THE ANTI-MONEY LAUNDERING LAW: OPTIMIZING ASSET RECOVERY IN CORRUPTION CASES IN INDONESIA

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Abstract

Corruption is still a severe problem in Indonesia. In 2022, the Attorney General Office of the Republic of Indonesia alone succeeded in handling 405 of 597 corruption cases in 2022, with a state loss of 39.207 trillion out of a total of 42.747 trillion. When the state loss is combined with the state economic loss, which refers to the indirect financial impact on the state due to corruption, the number will be up to IDR142 trillion. However, the total asset recovery through fines and state loss compensation was only IDR 8.9 trillion. Thus, it only recovers about 12% of state losses due to corruption. One of the efforts to recover state losses is applying the law on money laundering because its main objective is to pursue the proceeds of a crime, including corruption. This paper discusses how the money laundering law will be more optimal in recovering state losses due to corruption and its application in several cases. The method used in this study is normative legal research, especially case studies relating to implementing a money laundering law on corruption cases. From the study, it can be concluded that the anti-money laundering law was not optimally applied in asset recovery in corruption cases. Only in corruption, which indicates an actual state loss, can the anti-money laundering law be applied. Moreover, there should also be an indication that the money laundering process follows corruption. Applying the Anti-Money Laundering Law, whether in the investigation, prosecution, or trial of criminal acts of corruption, has not been optimal, so it has not supported efforts to recover state losses.

Keywords: *Anti-Money Laundering Law; Asset Recovery; Combating Corruption.*

Introduction

One of the most severe issues confronting Indonesia as a developing country is corruption, which jeopardizes people's social and economic rights.[1] Large-scale corruption (grand corruption), usually associated with a dictatorial government and its cronies, will misuse public funds on a large scale and spend money, resulting in disaster for a country's economy.[2] Corruption has also caused the decline of social welfare and harms a nation's values, integrity, and identity in society's social and behavioral components of the country.[3].

Although efforts to eradicate corruption in Indonesia have been underway since 1958, systematic efforts did not begin until the reform era, specifically with Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption, also known as the Anti-Corruption Law (ACL). Law No. 19 of 2019 amended to Law Number 20 of 2001.[4] However, the fight against corruption has not gone smoothly in the next three decades. Transparency International's annual report includes one indicator of current conditions. 2019, for example, Indonesia remained 85th out of 183 countries, with a score of 40.[5] In 2020, Indonesia's corruption perceptions ranking fell to 102 out of 180 countries studied, scoring 37. In 2022, the Indonesian Perception Corruption Index dropped again to the core of 34 and ranked 110 out of 180 countries. The report means that Indonesia remains among the countries with a high level of corruption.

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[1] Ulang Mangun Sosiawan, "Peran Komisi Pemberantasan Korupsi (KPK) Dalam Pencegahan Dan Pemberantasan KorupsiNo Title," *Jurnal Penelitian Hukum De Jure* 19, no. 4 (2019): 517–38.

[2] U. Myint, "Corruption: Causes, Consequences and CuresNo Title," *Asia-Pacific Development Journal* 7, no. 2 (2000): 45.

[3] Nandha Risky Putra and Rosa Linda, "Integritas : Jurnal Antikorupsi Corruption in Indonesia : A Challenge for Social Changes," *Integritas: Jurnal Anti Korupsi* 8, no. 1 (2022): 13–24.

[4] Muh Ilham. "Tackling Corruption in Indonesia: Lessons Learned and Future Directions" *Journal of Public Representative and Society Provision*, 2, no. 3, (2023): 83-88. Doi: https://doi.org/10.55885/jprsp.v2i3.234.

[5] Wawan Suyatmiko, "CPI 2019: Korupsi Dan Pentingnya Integritas Politik," Transparancy International Indonesia, 2020, https://ti.or.id/cpi-2019-korupsi-dan-pentingnya-integritas-politik/.

Recovery of state financial losses is one of the goals of law enforcement in corruption cases.[6] This policy is consistent with retributivism, which holds perpetrators accountable for their actions.[7] As a result, the ACL has provided some authorities related to asset recovery efforts. Sobary (2014) states that the return of state losses, or state financial losses, is still insignificant compared to the number of losses suffered. The state loss covers over-expenditure, fictitious expenditures, and mark-up budgets.[8] Indonesia Corruption Watch (ICW) shows that the return of state losses due to corruption in 2020 only amounted to Rp. 8.9 trillion, while the total state losses reached Rp 56.7 trillion.[9] Corruption also happens in the lowest level of government. It means corruption of village funds done by the village head or officials. [10].

Currently, the strategy for eradicating corruption and recovering state losses is to apply a money-laundering law regime that accommodates the approach of pursuing the proceeds of crime (following the money) and then pursuing the perpetrators.[11] The Indonesian parliament then enacted Law Number 15 of 2002 concerning the Eradication of Money Laundering here and after, referred to as the Anti-Money Laundering Law (AML). It was then replaced by Law No. 8 of 2010. The law adopts rules that allow

[6] Ade Mahmud, "Poblematika Asset Reocovery Dalam Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi," *Jurnal Judisial* 11, no. 3 (2018): 351.

[7] Hendi Yogi Prabowo, "To Be Corrupt or Not to Be Corrupt Understanding the Behavioral Side of Corruption in Indonesia," *Journal of Money Laundering Control* 17, no. 3 (2015): 315.

[8] Febby Mutiara Nelson, *Sistem Peradilan Pidana Dan Pennggulangan Korupsi Di Indonesia*, 1st ed. (Depok: Rajawali Pers, 2021).

[9] Tatang Guritno, "Data ICW 2020: Kerugian Negara Rp 56,7 Triliun, Uang Pengganti Dari Koruptor Rp 8,9 Triliun," *Kompas*, March 22, 2021, https://nasional.kompas.com/read/2021/03/22/19301891/data-icw-2020-kerugian-negara-rp-567-triliun-uang-pengganti-dari-koruptor-rp.

[10] Yoserwan, "Supervision of Village Fund Management through Local Wisdom as a Corruption Prevention Effort in Nagari Governments in West Sumatra, Indonesia," *ISVS E-Journal* 10, no. 4 (2023): 211–20.

[11] Maximilian Johannes Teichmann, "How Useful Are Anti-Money-Laundering Efforts in Combating Bribery?," *Journal of Money Laundering Control,* 23, no. 2 (2020): 313,https://www.emerald.com/insight/content/doi/10.1108/JMLC-03-2018-0025/full/html?skipTracking=true.

enforcement agencies to trace, freeze, and confiscate stolen assets to maximize asset recovery

Corruption is always related to money or assets, especially state finances.[12] According to Arifin Surya Atmaja, state finance is all activities related to money carried out by the state for the public interest anywhere and in any interest. Therefore, every perpetrator of a criminal act of corruption will try to hide the results of their crime to keep the asset safe from the reach of law enforcement officers through the financial system.[13] Considering the relationship between corruption and money laundering, the United Nations Office on Drugs and Crime (UNDOC) stated that corruption and money laundering are interconnected. There are essential links between corruption and money laundering.[14] The ability to transfer and conceal funds is critical for the perpetrators of corruption, especially for large-scale or grand corruption. Most money laundering cases in Indonesia also relate to bribery or corruption as a predicate crime.[15] Therefore, legislation on money laundering plays a significant role in detecting corruption and other crimes by providing a basis for financial-related investigations—the Indonesian AML of Indonesia, which places corruption as the first predicate crime of money laundering. The world has witnessed extraordinary growth in efforts to control crime for economic and political gain through measures to identify, freeze, and confiscate the proceeds of crime nationally and transnationally.[16]

In contrast to the conventional approach to crime prevention, the anti-money laundering regime uses a different approach: pursuing the proceeds of crime rather than just seeking the suspect.[17] With such an approach, the Indonesian AML adopts various special powers that

[12] Nelson, *Sistem Peradilan Pidana Dan Penggulangan Korupsi Di Indonesia*.

[13] Ioana Livescu, "The Link between Money Laundering and Corruption Is the Fight Effective?" (Tilburg University, 2017), http://arno.uvt.nl/show.cgi?fid=142895.

[14] David Chaikin and J. Sharman, *Corruption and Money Laundering: A Symbiotic Relationship'* (New York: Palgrave Macmillan, 2009).

[15] M Ilham Wira Pratama et al., "Analisis Terhadap Sanksi Pidana Tindak Pidana Pencucian Uang (Perspektif Economic Analysis of Law)," 2022, 12–27, https://doi.org/10.18196/ijclc.v3i1.12343.

[16] Michael Levi and Michael Levi, "Evaluating the Control of Money Laundering and Its Underlying Offences : The Search for Meaningful Data," 2020, 301–20.

[17] Yunus Husiein and Roberts K, *Tipologi Dan Perkembangan Tindak Pidana Pencucian Uang,* (Depok: Rajawali Pers, 2018).

allow law enforcers to take extraordinary measures at the investigation, prosecution, and trial levels.[18] With this special authority, it is possible to analyze financial transactions and detect crime-related assets, including corruption. Such powers are, for example, to delay transactions, block assets that are reasonably suspected to be the proceeds of criminal acts, request written information regarding assets, and apply the shifting of the burden of proof, which obliges the defendant to prove that his assets do not result from corruption.

However, in practice, the AML, with all its specificities, has yet to be optimally used in handling corruption crimes. In the Yusafni case, the corruption has caused a state loss of as much as Rp. 62.5 billion, for example, only Rp.3 billion can be recovered. Padang District Court, in its decision No. 01/Pid.Sus-TPK/2018/PN.Pdg punishes the defendant with nine years in jail, Rp.1 billion fine, and Rp—62.5 billion compensation for state loss. The court also ordered the confiscation of Rp.3 billion of the defendant's assets that can be frozen. Law enforcement of the case can only recover Rp.3 billion of the state loss. While executing Rp. 1 billion fine and Rp 62.5 billion, state loss compensation is nearly impossible because the investigator could not find another defendant's asset to freeze. Therefore, there should be more effort to optimize the recovery of state losses. This paper examines various provisions that make it possible to maximize the return of state losses through implementing the Anti-Money Laundering Law and analyses the implementation of the law in the justice process.

Method

This paper uses an empirical study about the application of legal research. The research was carried out by applying normative legal research. It's about how legal officers apply legal norms in some instances or a case study. In this research, the study focused on the Yusafni case, the decision No. 01/Pid.Sus-TPK/2018/PN.Pdg of Padang District Court. The case studied is the Yusani case, which is related to a fictitious letter of accountability in the spatial planning and settlement road infrastructure project. The statute approach is used in analyzing the case, especially the Anntu-Meney Laundering Law, the

[18] TB Irman, *Hukum Pembuktian Pencucian Uang Money Laundering* (Bandung: MQS Publising, 2006).

Corruption Law, and the general principle of criminal law, as adopted by the Indonesia Penal Code and the Indonesia Procedural Criminal Code.

Results and Discussion

1. Endeavor to Corruption Eradication in Indonesia

Addressing corruption as a social or legal problem must use a comprehensive social policy.[19] A criminal policy is one of the efforts to solve these social problems such as corruption. The criminal policy is a reasonable effort by society to overcome crime by formulating penal and non-penal policies. The penal policy is applied through criminal law with a repressive approach, while non-criminal law approaches use a preventive and systematic approach to crime prevention. Both methods should be implemented simultaneously and mutually support each other.[20]

The Indonesian people's struggle against corruption has come a long way. These efforts can be traced back to the 1950s when Indonesia became independent. President Sukarno, at that time, stipulated Military Rule No. PRT/PM/11/1957 concerning Confiscation, Prosecution, and Examination of Corruption Acts. This step was followed by the establishment of an anti-corruption agency called PARAN (State Apparatus Retooling Committee).[21] One of the essential contents of the Presidential Decree is to require all state administrators to submit wealth reports. This step was followed by the enactment of Law No. 24 Prp. of 1960 concerning the Investigation, Prosecution, and Examination of Corruption Crimes. This law was followed with a new initiative, establishing a program called "Operation Budhi" through Presidential Decree (Presidential Decree) No. 275/1963 to carry out efforts to eradicate criminal acts of corruption. Until the fall of the Old Order regime, this institution experienced failure due to opposition from state officials.

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[19] I Kettur Seregis and Et. Al., "Preventing the Acts of Corruption through Legal Community Education," *Journal of Social Studies Education Research,* 9, no. 2 (2018): 145.

[20] Sudarto, *Kapita Selekta Hukum Pidana* (Bandung: Alumni, 1981).

[21] Kementeriaan Hukum dan Hak asasi Manusia. (2011). *Laporan Akhir Tim Kompedium Hukum Tentang Lembaga Pemberantasan Korupsi*, available at <www.bphn.go.id/data/documents/kpd-20-11-7>, accessed 3 March 2024.

In the New Order Regime era, the government tried to eradicate corruption. At that time, several regulations had been promulgated as the primary instruments for eradicating corruption. Several agencies have also been created to enforce the law. The first step taken by Suharto as Minister Commander of the Army and Deputy Prime Minister for Defense and Security Affairs was to form the State Financial Oversight Team (Pekuneg) on 30 April 1966. After being inaugurated as Acting President of the Republic of Indonesia in March 1967, Soeharto formed the Corruption Eradication Team (TPK), which was formed based on Presidential Decree No. 228 of 1967. The chairman of the TPK is the Attorney General. The advisors are the Minister of Justice, the National Police Chief, and all the Force Chiefs of Staff.[22] They consider that these efforts still need a solid legal basis, with the support of the legislative body, Law No. 3 of 1971, concerning the Eradication of Corruption Crimes. However, once again, the results could have been more satisfactory. It can also be seen that in this era, corruption is becoming increasingly common and contributing to the downfall of the New Era Regime itself.[23]

Various demands for change emerged after the fall of the New Order Regime, which gave birth to the Reform Regime. One of them is eradicating corruption. The call to eradicate corruption was responded to by issuing regulations as the primary tool. These efforts began with the enactment of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. In a relatively short time, this law was then amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Law on the Eradication of Corruption Crimes. This change aims to provide regulations that support efforts to eradicate corruption optimally.

The most crucial aspect accommodated in this regulation is that it has answered the public's demands that corruption is recognized as this nation's most dangerous enemy and must be declared an extraordinary crime. Therefore, it is also necessary to take extraordinary

[22] Muhammad Yasin. (2019). *Lembaga Anti Korupsi di Era Orde Baru*, Hukum Online, https://www.hukumonline.com/berita/a/lembaga-antikorupsi-di-era-orde-baru-lt5da674705368d/?page=3

[23] Pricilia Ryana Faculty of Law.. "Corruption in the Study of Law and Human Rights Korupsi dalam Kajian Hukum dan Hak Asasi Manusia", *Lex Scientia Law Review*, 2, no. (2018): 177-188

measures. This is reflected in the Consideration Consideration of Law No. 20 of 2001, which states that criminal acts of corruption that have occurred widely not only harm state finances but also constitute a violation of the social and economic rights of society at large so that criminal acts of corruption need to be classified as crimes Extraordinary crime. To enforce the ACL, Indonesia has enacted several related laws and regulations. The first is Law No. 30 of 2002 regarding the Corruption Eradication Commission (CEC). The law forms a particular institution that has the power to investigate and prosecute a corruption case besides the Police police and prosecutor.

Even though some laws and regulations contain substantive and procedural requirements, efforts to eradicate corruption still need to be improved, especially in recovering state losses. Because bribery is more related to assets, property, or money, there should be a more effective mechanism for pursuing assets considered the proceeds of corruption. For this purpose, one of the laws regarding money laundering was established for the first time with Law No. 15 of 2002 concerning the Prevention and eradication of Money Laundering Crime of money laundering, and it was finally replaced by Law No. 8 of 2010. The Money Laundering Eradication Law approach prioritizes efforts to pursue the proceeds of crime (follow the money) to recover state losses due to corruption.

The birth of the Anti-Money Laundering Law is inseparable from global concern about the rise of various criminal acts, categorized as the most severe crimes or extraordinary crimes, such as drug crimes, terrorism, environmental crimes, and corruption. It began with the United Nations (UN) concerns about the illicit trafficking of narcotics and psychotropic substances in the late 1950s. These concerns led to the signing of the United Nations Single Convention on Narcotics in 1961. In 1972, the convention was amended by the 1972 Protocol, amending the Single Convention on Narcotics, 1961. Then, in 1972, the UN adopted the United Nations Convention on Psychotropic Substances. The subsequent development was the agreement of the International Convention Against Transnational Crime, known as the Palermo Convention, in 2000.[24] With the development of new

[24] Tracy Anderson, "Anti-Money Laundering: History and Current Developments," *JIBLR* 30, no. 10 (2015): 523.

dimension crimes, various serious crimes, such as corruption, have become the basis for the increasing urgency of the AML.

These various international developments also affect the development of Law in Indonesia in dealing with crime, including corruption. Indonesia finally passed Law Number 15 of 2002 concerning AML. In its general explanation, AML states that assets originating from various crimes enter the financial system, especially the banking system. In this way, the origin of these assets is difficult for law enforcers to trace. Efforts to hide or disguise the origin of assets obtained from criminal acts are known as money laundering.[25].

Shortly after the enactment of AML, the parliament found that the law did not meet international standards in the anti-money laundering legal regime. That is why Indonesia amended Law No. 15 of 2002 with Law No. 25 of 2003. To optimize the role of money laundering law in fighting crimes, Indonesia then enacted Law No. 8 of 2010 to replace Law No. 25 of 2003. One of the crucial points in this change is related to the expansion of the reporting party. The amendment aims to strengthen the handling of various crimes, especially corruption, which is detrimental to state finances.[26]

2. Implementation Anti - Money Laundering Law in Corruption Cases

Implementation of Anti-Money Laundering Law in Investigation

Handling corruption shall involve several related laws, institutions, and law enforcement officers. (Nugroho, 2013) The rules related to the handling of corruption crimes are:

a. Law Number 8 of 1981 concerning the Criminal Procedure Code, commonly known as the Criminal Procedural Code (CPC).
b. Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. It is amended by Law Number 20 of 2001.
c. Law Number 30 of 2002 concerning the Corruption Eradication Commission was amended by Law Number 10 of 2015 and amended lastly by Law Number 19 of 2019.

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[25] Maskun Maskun, "Combating Corruption Based on International Rules," *Indonesia Law Review* 4, no. 1 (2014): 54–66, https://doi.org/10.15742/ilrev.v4n1.74.

[26] Romli Atmasasmita, "Analisis Hukum Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang," *Padjadjaran Jornal of Law* 3, no. 1 (2016): 1–23.

d. Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.
e. Law Number 2 of 2002 concerning the Indonesian National Police.

The above laws have provided the institutions in law enforcement agencies for criminal acts of corruption in investigation, prosecution, and judicial process. According to Article 26 of the ACL, investigations, prosecutions, and examinations of criminal acts of corruption in courts are carried out based on the applicable criminal procedural law unless otherwise stipulated in this law. Therefore, the institutional and investigative authority in criminal acts of corruption must still refer to the CPC. According to the CPC, investigators are officials of the state police of the Republic of Indonesia or certain civil servants who are given special authority by law to conduct investigations. These provisions mean that police have the power to investigate every criminal act, including corruption unless a special law excludes it. According to ACL, the investigations, prosecutions, and examinations in courts of corruption cases shall be run according to CPC, except otherwise regulated by special law. This means that three investigation institutions may investigate corruption cases. They are an investigator from the police, an investigator from the prosecutor, and an investigator appointed by the CEC.

Article 25 of ACL says that there are several specialties related to investigative authority, as regulated in Article 29 of the Law on the ACL. The authority is to reveal the bank secrecy of a suspect in a corruption crime. The procedure is the same as other criminal acts: apply for approval from the Governor of Bank Indonesia. Furthermore, Article 29, paragraph (4), states that investigators, public prosecutors, or judges may request a bank to block a deposit account belonging to a suspect of corruption. Article 30 states that investigators have the right to open, examine, and confiscate letters and items by post, telecommunications, or other means suspected of having a connection with being investigated in a corruption case.

Under Article 32, the investigator can submit the examination results to the State Attorney or the agency harmed for a civil lawsuit. The investigators exercise the authority if they find and believe that one or more elements of a criminal act of corruption do not have sufficient evidence. At the same time, there has been a loss of state finances.

This investigation's primary task or authority in a corruption case is more aimed at saving state finances through a civil lawsuit, also called the Stolen Asset Recovery (STAR) process. Asset recovery is critical in strengthening essential foundations of sustainable development, such as the rule of law and strong, transparent, accountable institutions.[27] There is still a possibility of recovering state losses even though it is difficult to prove through a civil lawsuit. However, the question is whether the process will be more effective in recovering state losses. The civil law suite process will take longer, and the evidence will be more formal, while the results will not necessarily be able to recover state losses quickly. Therefore, the criminal justice process will be more effective in taking over the assets of the corruptor.[28].

The following authority is regulated in Article 33, namely, to submit the case file resulting from the investigation to the State Attorney or to the agency that was harmed for a civil lawsuit against the heirs if the suspect dies in the inquiry. At the same time, there has been an actual state financial loss. This provision also allows settlement through civil lawsuits, which will only sometimes be more effective and efficient in efforts to recover state losses.

In addition to police investigators, Article 27 of ACL states that if there is difficulty in collecting the evidence, the Attorney General may form a joint team of investigators from the police, KPK, or any other related institution under the Attorney General's coordination. With this provision, some assume that the prosecutor's office also has the authority to conduct investigations into criminal acts of corruption. The decision of the Constitutional Court in its Decision Number 16/PUU-X/2012 confirms the opinion. In principle, the Constitutional Court believes that the prosecutor's authority to investigate criminal acts of corruption does not conflict with the Constitution, so the authority has a legal basis.

As the CPC regulates, the prosecutor's investigator has the same authority as other investigators in corruption. Likewise, the police

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[27] Prosper Maguchu and Ahmad Ghozi, "The Role of Civil Society Organisations in Asset Recovery," *Indonesia Journal of International Law* 19, no. 2 (2022): 317–38.

[28] Aghia Khumaesi Suud, "Optimalizationof the Rorel of Asset Recovery Center (PPA) Of The Attorney General's Office of the Republic of Indonesia in Asset Recovery of Corruption Crime Results," *Jurnal Hukum Dan Peradilan* 9, no. 2 (2020): 211–31, https://doi.org/10.25216/JHP.9.2.2020.211-231.

investigator has authority as regulated in the ACL, just as the CEC investigator has. Concerning the authority of the investigation, specifically in money laundering, in which the predicate crime is corruption, the prosecutor is also authorized to conduct investigations in money laundering, especially where the predicate crime is a criminal act of corruption.

Under the mandate contained in ACL, Article 43 of ACL mandates the formation of the CEC within no later than 2 (two) years after this law comes into force. The Commission has the authority to coordinate and supervise, including conducting investigations and prosecutions under the prevailing regulations. Thus, in addition to the police investigators and prosecutors' investigators, the Corruption Eradication Commission has the authority to conduct an investigation.[29] Regarding the powers of investigation, CEC investigators still refer to the CPC and the provisions contained in the ACL. However, apart from these two laws, the authority of the CEC, including the authority to investigate and other authorities, is regulated by a special law regarding the CEC.

With the mandate of Article 43 of the ACL, Indonesia enacted Law Number 30 of 2002 concerning the CEC. The law then has suffered several amendments to adopt the condition. Law Number 19 of 2019 is the latest amendment to the law. This law also changed some of the duties and authorities of the CEC as regulated in Article 6, but the changes were not too significant. This authority includes taking preventive measures, coordinating with various relevant agencies, monitoring government administration, supervising the eradication of corruption, investigating and prosecuting, and implementing judges' decisions. This broad authority often leads to thoughts that view the KPK as a super body.[30]

Changes have occurred in the investigation, and there are differences in the investigative authority between the police investigators, the Attorney General's Office, and the CEC. From the perspective of the perpetrators, the CEC only has the power to investigate corruption

[29] Ulang Mangun Sosiawan, "Peran Komisi Pemberantasan Korupsi (KPK) Dalam Pencegahan Dan Pemberantasan KorupsiNo Title" 19, no. 4 (2019): 517–38.

[30] Chandra Bayu, "Chandra Bayu, 'Transformasi Kelembagaan KPK: UU KPK Sebagai Kebijakan Pencegahan Korupsi Di Indonesia' Dinamika Sosial Budaya, Vol 23, No.1, Juni 2021, Pp 84 – 97 Hlm.85," *Dinamika Sosial Budaya* 23, no. 1 (2021).

cases involving law enforcement officers, state administrators, and other people related to criminal acts of corruption. Meanwhile, regarding its object, the CEC's authority is limited to a state loss of at least Rp. 1 billion.

Regarding the wiretapping authority, the new provisions are more detailed. Articles 12B, 12C, and 12D stipulate that after obtaining written permission from the supervisor and previously having to submit a written request. Against such a request, the Supervisory Board may grant permission 24 hours after the request is submitted. Furthermore, the wiretapping permit is only valid for six months after giving written consent.

In addition to regulating the wiretapping procedure, Law Number 19 of 2019 also regulates the obligation to report the practice of wiretapping. Article 12 states that reports must be made periodically to the Supervisory Board, and the KPK commissioners must account for the implementation within 13 days after the wiretapping. Since wiretapping is restraining citizens' freedom rights, there should be strict control of its implementation.[31] Accountability includes the reason for wiretapping, which is only for the sake of the justice process. The law orders destroying any results of wiretapping unrelated to criminal acts of corruption as soon as possible. Suppose the officials do not destroy the result of wiretapping unrelated to an act of corruption. In that case, the official and the person who keeps the wiretapping results will be subject to criminal penalties.

Each law enforcer's implementation of an investigation should follow their respective authorities. It means that each law enforcer, in this case, the police, prosecutors, and the CEC, carries out the investigation independently under their respective rules and authorities. The law limits the investigative authority of the CEC to corruption that causes a loss of up to Rp.1 billion and corruption that involves state officials or attracts public attention. If necessary, the Police investigators and the Prosecutor's Office can coordinate with the CEC. Although each law enforcer has its authority, coordination must be

[31] Rangga Sujud Widigda Aisyah Sharifa Damian Agata Yuvens, "Dilema Upaya Hukum Terhadap Penyadapan," *Dilema Upaya Hukum Terhadap Penyadapan* 43, no. 7 (2017): 292.

made with relevant law enforcement agencies from the beginning of an investigation.[32]

Regarding the coordination, Article 75 of the AML states that if an investigator finds sufficient preliminary evidence of the occurrence of a criminal act of money laundering and a predicate crime, the investigator should combine the investigation of both crimes and notify the CRAFT.

In addition, investigators must pay attention to the urgency of implementing the AML. Implementing the AML in criminal corruption is possible only if the criminal act is detrimental to state finances. Those criminal acts of bribery violate Article 2—Articles 3, 6 to 9, 11, 12, and 13 of ACL.

Furthermore, the implementation of AML will only be possible if, from the investigation, there are shreds of evidence that the perpetrator hides the assets originating from criminal acts of corruption. To get information that the assets result from corruption, the investigator should build coordination with the CRAFT and or with other relevant agencies. In practice, the coordination among relevant agencies in tracing the asset could be more optimal. In the Yusafni case (the decision of the Padang District Court No. 01/Pid.Sus-TPK/2018/PN.Pdg), which was investigated by the West Sumatra Regional Police and then had been tried by the Padang Corruption Court, only a minimal number of assets were confiscated. It was only Rp. Three billion of the total state loss of Rp. 60 billion.

Implementation of Money Laundering Laws in Prosecution

The prosecutor's office carries out the prosecution function after receiving the delegation of the case from the police investigator or the prosecutor investigator himself. At this stage, the investigator and prosecutor should coordinate well to build an integrated criminal justice system.[33] Formal coordination is marked by filling out the letter of notification to the prosecutor of the investigator's commencement of an investigation. Sometimes, the investigator needs to send the letter.

[32] et al. Stephenson, "Barriers to Asset Recovery An Analysis of the Key Barriers and Recommendations for Action" (Washington DC, 2011), www.worldbank.org,.

[33] Hwian Christianto, "Arti Penting Surat Pemberitahuan Dimulainya Penyidikan: Kajian Putusan Mahkamah Konstitusi Nomor 130/PUUXIII/2015'," *Jurnal Konstitusi* 16, no. 1 (2019): 172.

This condition may result in the prosecutor returning the drossier from the investigator.

There must be strong coordination between the investigator and prosecutor to investigate a corruption case related to money laundering activity. Every corruption case is always an attempt to divert or hide the results of the corruption. Therefore, the anti-money laundering law will make it easier to trace and confiscate assets related to criminal acts of corruption to restore state losses (asset recovery).

With the indication of a money laundering crime in an alleged corruption crime, it is automatically possible to carry out legal proceedings against the allegation. In the prosecution stage, the public prosecutor can automatically carry out simultaneously or not simultaneously with the prosecution of criminal acts of corruption and money laundering. However, article 75 of the AML regulates the merger of cases only in the investigation stage, not in the prosecution.

The prosecution of criminal acts of corruption combined with criminal acts of money laundering shall take a model of the so-called combination of an alternative, subsidiary, and cumulative indictment. Article 69 of the AML states that to carry out an investigation, prosecution, and examination in a court of a criminal act of money laundering, it is not necessary to prove the original crime. Thus, to prosecute a criminal act of money laundering, it is not required to confirm the predicate crime.[34]

However, suppose the public prosecutor decides to prosecute the crime of money laundering and corruption in one indictment under Article 76. In that case, the public prosecutor must delegate the case to the court within 30 days after the case is declared complete. This regulation can be an obstacle because such an arrangement will give the prosecutor limited time to collect evidence before filing it to court.

Applying the AML in corruption crimes brings various conveniences to law enforcers, including the public prosecutor, because an extraordinary power provides more substantial authority for law

[34] Wahyu Wiriadinata, "Wahyu Wiriadinata, Pembalikan Beban Pembuktian Pada Tindak Pidana Korupsi (Reversal Burden of Proof on Corruption), Jurnal Legislasi Indonesa, Vol. 9 No. 2 - Juli 2012, Hlm.329," *Jurnal Legislasi Indonesa,* 9, no. 2 (2012): 329.

enforcement.[35] In the prosecution process, the prosecutor may exercise various special powers, such as ordering the reporting party to postpone transactions on assets as proceeding of crime. With this authority, the public prosecutor can order a search and confiscation of these assets. The prosecutor may also use the search and confiscation results as evidence in the court trial. Article 71 of the AML also allows prosecutors to freeze that are known or reasonably suspected to be the proceeds of corruption.

Article 72, paragraph (1) provides the authority to ask the reporting party to provide written information regarding a suspect's assets. This authority will benefit the prosecutor in proving that the assets are the result or not the result of corruption. If the defendant cannot prove it, the assets result from corruption. Reversing the burden of proof will be more advantageous for the prosecutor in the proving process. However, the prosecutor should provide additional evidence to convince the judge that the defendant is guilty.[36]

In connection with the return of state losses, provisions regarding transaction delays, blocking of assets, and freezing of providing written information regarding assets will be beneficial in securing assets related to criminal acts of corruption. At the same time, it will give a more significant opportunity to recover state losses optimally.

The practice of implementing AML by a prosecutor in a corruption case is the case of the Land Acquisition Projects for Strategic Development in Various projects in West Sumatra, which, based on the findings of the Supreme Audit Agency (BPK), had caused state losses of Rp.62,506,191,351.25.

In this case, the Public Prosecutor indicted the defendant had violated the following:

a. The first primary violates Article 2 paragraph (1) of ACL related to Article 55 paragraph (1) to -1 and Article 64 of the Indonesia Penal Code (IPC);

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[35] Alberto Chong and Florencio López-de-Silanes, "Money Laundering and Its Regulation" (Washington DC, 2007), https://publications.iadb.org/publications/english/document/Money-Laundering-and-its-Regulation.pdf.

[36] Sahuri Lasmadi and Elly Sudarti, "Pembuktian Terbalik Pada Tindak Pidana Pencucian Uang," *Refleksi Hukum* 5, no. 2 (2021): 199–218, https://doi.org/https://doi.org/10.24246/jrh.2021.v5.i2.p199-218.

b. One subsidiary violates Article 3 paragraph (1) ACL related to Article 55 paragraph (1) to -1 and Article 64 of the IPC;
c. Violating Article 3 of AML

The prosecutor then filed the following demands:

a. The defendant is guilty of committing a criminal act of corruption together as stipulated and threatened with a criminal offense in the first primary indictment Article 2 paragraph (1) of ACL in its relation with Article 55 paragraph (1) to -1 and Article 64 of the IPC, and the second indictment as regulated and threatened in Article 3 of AML;
b. sentencing the defendant with a prison sentence of 10 years reduced by the period of detention that the defendant has served with an order that the defendant remains detained in the State Detention Center;
c. imposing a fine of Rp. 1,000,000,000,- subsidiary for one year in prison.
d. Pay a replacement fee of Rp. 62.506191. 353, 25, a subsidiary is sentenced to 5 years in prison.
e. Stipulate that the defendant pays court fees of Rp. 10,000,-.

The prosecution used a combination of types of indictment. This means that the prosecutor simultaneously charged the defendant with corruption and money laundering. The first indictment says that the defendant violates Article 2 of ACL and Article 3 of ACL; in the subsidiary indictment, the defendant violates Article 3 of AML. The prosecutor also claims that the court confiscated the assets and to pay the fine and or compensation determined by the judge.

Implementation Anti Money Laundering Law in the Trial

The judiciary's authority is to examine and decide cases submitted by the prosecutor's office through the public prosecutor. The court hearing follows the general substance and procedural criminal law, except if particular measures result in the AML. The specialties are as follows: First, examining a money laundering case in court does not require proof of its predicate crime. Secondly, the judge can order the reporting party (bank or non-bank financial institution) to postpone a transaction on assets known or reasonably suspected to result from a criminal act. Third, the judge can order the reporting party to freeze the assets known or reasonably suspected to result from a criminal act.

Fourth, the judge can ask the reporting party to provide written information regarding the assets suspected of originating from a criminal act. Fifth, the judge may order the defendant to prove that the assets confiscated do not result from or relate to a criminal act (the shifting of the burden of proof). Seventh, the judge can hear the case without the defendant's presence.

Along the trial, various special powers in the AML will allow the investigator to pursue assets resulting from a criminal act. Regarding corruption, this provision will make it easier for efforts to recover state losses. Prosecuting criminal acts of corruption and money laundering exists in various court decisions. One of them is the decision of the Padang District Court No. 01/Pid.Sus-TPK/2018/PN.Pdg. The judges found that the defendant was guilty of committing a criminal act of corruption jointly and continuously as in the first primary and second indictments and sentenced him to nine years in prison, a fine of Rp. 1 billion, and compensation of Rp if the defendant fails to pay the compensation, 62,506,191,351.25, and three years in jail as a substitution.

The discussion of the court decision finds some points. First, the decision means that the money laundering charge violated Article 3 of AML, which was not proven. However, various pieces of evidence revealed at the trial reveal that the defendant used the money for business activities, namely in his company, and some of the evidence seized was the assets of a company owned by a company. This means that the defendant launders the money, which results from corruption. Therefore, the act of the defendant has entered the stages of placement, layering, and integration of the proceeds of the crime.[37] However, the judges did not consider the facts uncovered during the trial.

Second, the provisions governing Article 2 of the ACL provide a minimum penalty of four years and a maximum of 20 years. However, the judges sentenced the defendant to less than half of the maximum allowed punishment. This punishment confirms the ICW study, which showed a decrease in the length of punishment rendered by the judge in a corruption case, which only in an average of 2 years and one month

[37] Vandana Ajay Kumar,. (2012). "Money Laundering: Concept, Significance and its Impact", *European Journal of Business and Management,* 4(2), p.113-119.

in prison, while the maximum penalty is up to 20 years.[38] It also means that implementing AML in a corruption case does not affect a corruption case in terms of the length of punishment. Otherwise, the court's decision to punish a defendant for corruption and money laundering should provide a basis for judges to award a more severe punishment.

Third, from the financial aspect of the punishment, there are striking differences between the two crimes, corruption and money laundering. For corruption, the judge may award a fine of up to Rp.1 billion, while in money laundering, up to Rp.10 billion. In the decision, the judge imposed a fine of IDR 1 billion. It means that the judges give punishment based on ACL since, in their consideration, they revealed that the money laundering crime was proven. However, one of the advantages of implementing the ACL in the judge's decision is that the judge may impose additional penalties in the form of compensation for the state. However, executing state loss compensation is complex because limited assets are still available for payment.[39]

There are no clear rules for punishment if an act violates more than one specific criminal rule, in this case, corruption and money laundering. Article 63, paragraph (2) of the IPC, is only regulated simultaneously in the case of an act that violates both general criminal Law and special criminal Law at the same time. In that case, the judge shall punish according to the particular law. This provision is in line with the principle of *Lex specialis derogate legi generalis* (special law will deviate from general law).[40] However, placing a crime in the prosecutor's indictment will bring consequences that the prosecutor must provide evidence and the judge must consider. However, in another case, namely the Andi Kosasih case, the judge imposed a fine

[38] Nabilla Tashandra, "Kecenderungan Vonis Terhadap Koruptor Semakin Ringan," *Kompas.Com*, July 23, 2016, https://nasional.kompas.com/read/2016/07/23/16534101/icw.ada.kecenderungan.vonis.terhadap.koruptor.semakin.ringan.

[39] Diding Rahmat, "Formulation of Fine Criminal Policies and Replacement Money in Criminal Enforcement Corruption in Indonesia," *Jurnal Ius Kajian Huthkum Dan Keadilan* 8, no. 1 (2020): 85.

[40] Shinta Agustina, *Shinta Agustina* (Jakarta: Themis, 2017).

by using the AML, so the judge, in his decision, used the ACL and the AML at the same time.[41]

The last is the imposition of Article 55 of the IPC in a corruption case, which must bear law enforcement officials' responsibility to reveal other parties' involvement since the corruption is classified as organized crime.[42] There should be other parties brought before trial. Participation in a criminal act of corruption should also not be limited to Article 55 of the IPC but extended to Article 56 of the IPC because it will also involve other parties as people who help commit, even though in the context of corruption, the responsibility is the same as the perpetrator. However, the investigators brought no suspect other than the defendant in the abovementioned case. The imposition of Article 64 of the IPC or the article on continuing acts needs to be more accurate because they must meet specific requirements. The imposition of multiple charges, in this case, the corruption and money laundering, even though proven, does not impact the duration of punishment and the amount of fine and compensation for the state, nor does it affect efforts to recover state losses.

Conclusion

The objective of AML is to pursue the proceeds of crime. The implementation of the AML by criminal law enforcers in handling corruption crimes aims to optimize asset recovery since AML provides special measures for an investigator to trace, freeze, and confiscate corruption-related assets. However, in practice, the objective of AML could not be realized since only a few assets could be frozen and seized. In the investigation stage, only a tiny part of the asset could be confiscated since some of the assets had been transferred to other parties that may be involved in the act. In the judicial process, the judges found that the money laundering act was not proved, while the evidence shows that the accused transferred the money for some business activities. The coordination between the investigation agency and other

[41] Artdjo Alkostar, "Penerapan Undang-Undang Pencucian Uang Dalam Hubungannya Dengan Predicate Crime," *Jurnal Masalah-Masalah Hukum* 42, no. 1 (2013): 51, https://ejournal.undip.ac.id/index.php/mmh/issue/view/1023.

[42] Soeren C. Schwuchow. (2023). "Organized crime as a link between inequality and corruption", *European Journal of Law and Economics*, 55, p. 469–509. https://doi.org/10.1007/s10657-023-09764-x

related parties in tracing assets must be more vital to uncover the proceeds of corruption. Besides, the court tends to apply the Anti-Corruption Law in levying a fine whose maximum is Rp.1 billion, while according to AML, the maximum fine is Rp.10 billion. Therefore, law enforcement agencies handling corruption and money laundering cases should establish coordination in every stage of the process and between domestic and international institutions. The court should also use AML in sentencing with a fine since it will enable it to levy more fines besides incarceration.

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